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SEP 25 2009
KAREN M. WILLIAMS
U.S. MAGISTRATE JUDGE

Russ Smith, *pro se*
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September 23, 2009

Honorable Karen M. Williams, U.S.M.J.
United States District Court, District of New Jersey
Mitchell H. Cohen US Courthouse
One John F. Gerry Plaza
PO Box 1297
Fourth & Cooper Streets, Room 2040
Camden, NJ 08101

RE: Russ Smith v. Trusted Universal Standards in Electronic
Transactions, et al. Civil Action No. 1:09-cv-04567(RBK)(KMW)

Dear Judge Williams:

I am responding to a letter from Christopher Iannicelli to you dated September 23, 2009. In his letter Mr. Iannicelli indicates he represents defendant Cisco. However, he also indicates he is acting on behalf of all Defendants.

The reasons provided by Defendants for continuing the status conference are because I filed a motion for a partial remand and Defendants plan to file a motion to dismiss the Complaint in its entirety. Defendants claim the motions should be decided prior to the conference.

Defendants have not stated good cause [Fed. R. Civ. Pro. 16(b)(4)] to continue the conference. Disposing of pending motions is specifically specified as a matter for consideration under Fed. R. Civ. Pro. 16(c)(2)(k) and not a reason to delay it. Other stated purposes and matters for consideration under Fed. R. Civ. Pro. 16 include "expediting disposition of the action," "discouraging wasteful pretrial activities," "eliminating frivolous claims or defenses," and "facilitating settlement."

Defendants have already delayed this matter by refusing to accept electronic or mail service and sought (and were granted) extensions to file an answer. The Court should not grant further delays so Defendants can file frivolous motions with the intent to delay this proceeding.

It is highly unlikely that Defendants would be successful in a motion to dismiss all federal eavesdropping claims and State claims at this time. The State claims include:

1. Enforcement of a myriad of contracts,
2. Resolving numerous representations on the Defendants' web sites and by their employees (and the associated NJ Consumer Fraud Act claims), and
3. Defamation claims.

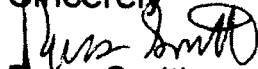
These claims arise from two completely different set of circumstances several months apart.

In considering a motion to dismiss pursuant to Fed. R. Civ. Pro. 12(b)(6), a court must accept the veracity of a Plaintiff's allegations. See *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974); see also *White v. Napoleon*, 897 F.2d 103, 106 (3d Cir. 1990). In *Nami v. Fauver*, 82 F.3d 63, 65 (3d Cir. 1996), the Court of Appeals for the Third Circuit added that in considering a motion to dismiss based on a failure to state a claim argument, a court should "not inquire whether the plaintiffs will ultimately prevail, only whether they are entitled to offer evidence to support their claims." Furthermore, "a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); see also *District Council 47 v. Bradley*, 795 F.2d 310 (3d Cir. 1986). If any dismissal or summary judgment would be considered on any of the Counts it generally would be at the completion of discovery. No other defenses are apparent or have ever been ever been raised by any of the Defendants with me.

I request the conference be held as planned on October 15, 2009. If Defendants actually have a basis for dismissing the case they will have filed their papers with enough time for me to review them by that

date. This will give Defendants the opportunity to convince me to voluntarily dismiss the suit without having the Court hear any motions and parties would also have additional information for possible settlement discussions [Fed. R. Civ. Pro. 16(a)(5)].

Sincerely

A handwritten signature in black ink, appearing to read "Russ Smith", written over the word "Sincerely".

Russ Smith

Cc: Counsel for Microsoft, TRUSTe, Cisco and Comcast via e-mail

Russ Smith
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